

RESOURCES & DEVELOPMENT MANAGEMENT DEPARTMENT  
REPORT

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**DATE:** July 13, 2004

**TO:** Orange County Planning Commission

**FROM:** RDMD/Current Planning Services Division

**SUBJECT:** Public Hearing on Planning Application PA04-0030 for Site Development Permit and Variance

**PROPOSAL:** Request for approval of a Site Development Permit under Orange County Zoning Code Section 7-9-150 to allow development of a 2-story single family home with attached 2-car garage, in the RE – 1 “Residential Estates” District, and a Variance to allow the structure to be placed as close at one point at 25’ from the front property line, where the District requirement is 40’.

**LOCATION:** In the Silverado-Modjeska Specific Plan area at 28452 Markuson Road, Modjeska Canyon, Third Supervisorial District.

**APPLICANT:** Larry R. Overly, property owner, and James A. Ventura, agent-of-record

**SYNOPSIS:** Current Planning Services Division recommends Planning Commission approval of PA04-0030 subject to the attached findings and conditions.

**STAFF PLANNER/CONTACT:** Jim Swanek, Project Manager  
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**BACKGROUND:**

The proposed project is a 2-story single family home with attached 2-car garage, subject to review as a “Site Development Permit” under Ordinance 3187 approved by the County Board of Supervisors 3/28/80, for a Zone Change from A1 “General Agricultural” to RE-1 “Residential Estates”, which provides:

ORDINANCE 3187

CONDITION 2. B. “Prior to clearance for issuance of building or grading permits for the subject property, a site development plan for each building site shall be submitted in the manner and containing the Information required by the Director of the Environmental Management Agency. The Planning Commission shall review the site development plan and may approve, approve with conditions, or disapprove the plan. The purposes of the site plan review are to assure land use compatibility and compliance with the guidelines set forth in the Silverado-Modjeska Plan regarding:

1. Limitation of grading to a maximum of ten foot cut/fill.
2. Planting of slopes according to the County of Orange standards so as to obscure grading scars from view of any road.
3. Preservation of existing trees and the natural character of the watercourse and areas subject to flooding, including riparian vegetation.”

In addition, a Site Development Permit is also required as a condition of the Tract Map, of which this legal building site is a part, worded as follows:

**TRACT 12802**

Condition 28. “Prior to the issuance of building or grading permits, whichever occurs first for each lot, a site development plan shall be submitted in a manner and containing the information required by the Director of the Environmental Management Agency to the Planning Commission for review and approval. The purpose of the site plan review is to assure land use compatibility and compliance with the conditions set forth in the Silverado-Modjeska Plan as follows:

- A. All grading will be limited to a maximum of 10 foot cut/fill, according to the provisions of the Silverado/Modjeska Specific Plan. After grading operations are completed, slopes will be planted according to County of Orange standards so as to obscure grading scars from view of any road.
- B. Existing trees will be preserved to the extent feasible in consideration of the requirements set forth in Condition No. 6 (NOTE: flood protection). The natural character of the watercourse and areas subject to flooding, including riparian vegetation, will be preserved.”

A Variance is also requested to allow the structure to be placed as close at one point at 25’ from the front property line, where the District requirement is 40’.

**SURROUNDING LAND USE:**

The project site and surrounding properties are designated as Rural Residential in the County General Plan Land Use Map. The zoning of the project site is RE-1-Conditional (SR) “Residential Estates” District, with a “SR” “Sign Restriction” overlay. The parcels to the immediate north and east have this same zoning; both are currently developed with single family dwellings. The property to the south of the project site on the other side of the creek is zoned A1 “General Agriculture” (SR) (FP-2) and is developed with a single family dwelling. Modjeska Canyon Road is immediately to the west, with the creek-bed continuing beyond that.

<b>Direction</b>	<b>Land Use Designation</b>	<b>Existing Land Use</b>
Project Site	RE-1 “Residential Estates”	Vacant
North	RE-1 “Residential Estates”	Single family dwelling (from 1947)

South	A1 “General Agricultural”	Single family residential (from 1985)
East	RE-1 “Residential Estates”	Single family residential (from 1999)
West	A1 “General Agricultural”	Vacant (streambed)

**REFERRAL FOR COMMENT AND PUBLIC NOTICE:**

A Notice of Hearing was mailed to all owners of record within 300 feet of the subject site. Additionally, a notice was posted at the site, at the 300 N. Flower Building and the nearest (Silverado) public library. A copy of the planning application and a copy of the proposed site plan were distributed to County Divisions for technical review and comment. Recommended standard Conditions of Approval related to grading, drainage, and construction noise were included to address review comments (see Attachment B).

**CEQA COMPLIANCE:**

The proposed project is covered by a Negative Declaration, which became final on June 15, 2004. Mitigation measures were included to address grading, drainage, the on-site private sewage disposal system, water quality, tree preservation, vehicle use “line-of-sight”, and construction noise. These mitigation measures have been transposed into recommended conditions of approval for the project. Prior to project approval, the decision-maker must conclude that this ND is adequate to satisfy the requirements of CEQA for the proposed project. A finding to that effect is included.

**ANALYSIS:**

The subject property is zoned RE-1-Conditional (SR) (Sign Restrictions) District. The preamble to the RE District regulations in the Zoning Code states: “the RE District is established to provide for the development and maintenance of low density single-family residential neighborhoods in which large building sites and generous open spaces are featured. Only those uses are permitted that are complementary to, and can exist in harmony with, such a residential neighborhood.”

The project entails only that grading which would be necessary to place an at-grade foundation. Since this is basically a streamside terrace, geotesting has indicated that good competent foundational material is some 5-7' below the current grade. Grading down would be confined to the immediate vicinity of the pad. Due to the proximity of the canopy of the existing pine tree, the presumption is made that it will be impacted and need to be mitigated for on a 1-for-1 basis, even though the applicant will keep the tree in place and simply trim branches. The existing oak is smaller (5" dba), and its canopy does not overhang any portion of the area of excavation.

By the nature of the project proposal, there would be no graded slopes, no grading scar(s), no alteration of the natural drainage course, and roof runoff so minimal that it is expected to be manageable by splash blocks and sheet flow to the creek.

The requested Variance would place the structure as close at one point at 25' from the front property line, where the District requirement is 40'. It should be noted that the allowable structural setback from the stream course easement at the rear of the property is 0', and the applicant has sought to use as much of that area as seems practical. The house would be located a mere 6' from the edge of the easement generally representing the streambank.

Variances are regarded by California legal history as “quasi-judicial” actions. In essence, the Commission is being asked to make a judgment as to whether strict application of the Zoning Code would cause a particular hardship to this applicant should a variance there from not be granted. Contrariwise, a judgment is also being made that the act of granting the variance would not result in hardship to another party, typically nearby property owners.

It is noted that all of the lots on Markuson Road, with the exception of this lot, the one immediately to the east, and the 3 across the street, were already granted a 25' front yard variance, as is proposed here, by the Planning Commission on 2/23/83. The property owner to the south, Mr. Bob Hunt, has also indicated in writing his support of the application.

Before this Variance request can be approved, the Commission, in accordance with State and County planning laws, must be able to make the following variance findings listed below. If the Commission cannot make these findings, the Variance application must be disapproved.

1. There are special circumstances applicable to the subject building site which, when applicable zoning regulations are strictly applied, deprive the subject building site of privileges enjoyed by other property in the vicinity and subject to the same zoning regulations.
2. Approval of the application will not constitute a grant of special privileges, which are inconsistent with the limitations placed upon other properties in the vicinity and subject to the same zoning regulations when the specified conditions are complied with.

In this case, the “special circumstances” staff is asking the Commission to recognize are the lot’s unusual shape and the varying topography limiting the flexibility of locating a home on the property. The recommended findings (Nos. 9 and 10) are so worded.

### **RECOMMENDATION**

Current Planning Services Division recommends the Planning Commission:

- a. Receive staff presentation and public testimony as appropriate; and,
- b. Subject to the attached Findings, approve Application PA 04-0030 subject to the attached Conditions of Approval.

Respectfully submitted,

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John B. Buzas, Manager  
RDMD/Current Planning Services

Attachments:

- A. Recommended Findings
- B. Recommended Conditions of Approval
- C. Negative Declaration PA040030
- D. Letter of Justification and Letter of Support

Exhibits: (Planning Commissioners' distribution only)

Plan Packages

**APPEAL PROCEDURE**

Any interested person may appeal the decision of the Planning Commission on this permit to the Orange County Board of Supervisors within 15 calendar days of the decision, upon submittal of required documents and payment of the appeal processing fee of \$245, filed at the Development Processing Center, 300 N. Flower, Santa Ana.